



**DEPARTMENT OF FAIR EMPLOYMENT
AND HOUSING
ENFORCEMENT DIVISION
*DIRECTIVE***

**DIRECTIVE
NUMBER
302**

**DISTRIBUTION
DATE
October 1, 1998**

1. **SUBJECT: RECEIPT OF CONFIDENTIAL INFORMATION**
2. **PURPOSE:** To set forth the procedures for the receipt and use of information accepted under a promise of confidentiality.
3. **BACKGROUND:** The Fair Employment and Housing Act (FEHA), Government Code section 12932, subdivision (b), states, in part, that "...the department shall hold confidential any information acquired in the regular performance of its duties *upon the understanding that it would be so held.*" (emphasis added). California Evidence Code section 1040 also outlines provisions for the receipt of confidential information by public employees in the course of their duties.

Because of the limits placed on the use of confidential information, it is necessary to ensure that confidential information will be accepted by the Department of Fair Employment and Housing (DFEH) only in rare instances. It is also necessary to ensure that when such information is accepted by the Department, it is not inadvertently released or used in an otherwise public document, such as an investigative report.

4. **PROCEDURES:**

A. **"Confidential Information" Defined:**

- 1) "Confidential information" as used in this Directive refers *specifically* to information obtained from an individual only after the Department agrees that it will not be released to anyone but DFEH personnel.
- 2) Where a promise of confidentiality has been made regarding information communicated orally, the Consultant's notes of such communications are to be handled in the same manner as written material accepted as "confidential."
- 3) Information received by the Department that has been marked confidential by the provider is not confidential information as defined above unless there has been prior agreement that the information will not be released.

B. **When to Accept Confidential Information:**

Confidential information is to be accepted only where:

- 1) there is no other way to obtain the information; and
- 2) the information is expected to lead to other information which need not be kept confidential; and
- 3) the District Administrator agrees that the information will be kept confidential.

C. Release of Confidential Information:

- 1) Information accepted by a Department representative under a promise of confidentiality **may not be released for any purpose**. This means, for example, it cannot be used to obtain information from third parties, substantiate a progress report, substantiate a closure, in settlement discussions or to prove a case at hearing, etc.
- 2) If confidential information as defined above is subpoenaed, the case should be immediately referred to the Legal Division for handling.

D. Guidelines For Accepting Confidential Material:

Confidential information should be accepted as follows:

- 1) The decision to accept confidential information will be the responsibility of the District Administrator. The authority to make such decisions, however, may be delegated as appropriate.
- 2) Once such information is accepted, it shall be marked "confidential" and retained in a separate envelope in the case file. The envelope shall be clearly marked with the case number and the words:

**"CONFIDENTIAL INFORMATION ACCEPTED
PURSUANT TO GOVERNMENT CODE SECTION 12932,
SUBDIVISION (b), AND EVIDENCE CODE SECTION 1040.
NOT TO BE RELEASED TO ANYONE BUT DFEH
PERSONNEL."**

5. APPROVAL:

Nancy C. Gutierrez, Director

Date